



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Burns & Roe Services Corporation

File: B-248394

Date: August 25, 1992

William A. Roberts, Esq., and Lee Curtis, Esq., Howry & Simon, for the protester.
Dawn Elliott Oakley, Esq., for DynCorp, an interested party.
William R. Medsger, Esq., Department of the Army, for the agency.
Christine F. Bednarz, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency acted in good faith in requiring a reevaluation of proposals after making award to the protester where the record shows that the agency may have applied technical evaluation standards not based upon the solicitation requirements during the evaluation process.

DECISION

Burns & Roe Services Corporation protests the agency's decision to reevaluate proposals and possibly reopen discussions under request for proposals (RFP) No. DAAJ04-90-R-0010, issued by the Department of the Army, Aviation Systems Command (AVSCOM), to acquire support services for the Charles Melvin Price Support Center in Granite City, Illinois.

We deny the protest.

The RFP, issued on January 22, 1991, required the contractor to perform 12 support functions associated with the management, operation, and maintenance of the Charles Melvin Price Support Center, a housing, recreational, and work facility for military personnel and their families. The RFP described these 12 support functions in separate Performance Work Statement areas as follows:

1. Program Management
2. Safety/Occupational Health
3. Other Support Services
4. Guard/Security Services
5. Club Systems

6. Morale Support Activities
7. Housing Management Operations
8. Facilities Engineering
9. Supply Operations Management
10. Vehicle Operations Management
11. Transportation Services
12. Property Administration

The RFP contemplated a 60-day phase-in period on a firm, fixed-price basis, followed by a base year and four additional 1-year options on a cost-plus-award-fee basis. The RFP stated that award would be made to the offeror having an acceptable management proposal, an acceptable technical proposal covering each Performance Work Statement, and the lowest total price (excluding award fee), provided that the proposal was found cost realistic.

The acceptability of an offeror's management proposal depended upon an acceptable rating in each of the five following factors on a "go/no-go" basis:

1. Organization Structure and Proposed Overall Staffing
2. Management Plan for Accomplishing Solicitation Requirements
3. Phase-In Plan
4. Experience and Past Performance
5. Subcontracting Plan

The acceptability of an offeror's technical proposal depended upon an acceptable rating in each of 11 technical factors and subfactors, as applied to each of the 12 Performance Work Statement categories, resulting in a total of 132 technical items in which an offeror must receive an acceptable rating, on a "go/no-go" basis, to remain eligible for award consideration. The technical factors and subfactors are:

1. Technical Understanding
2. Personnel Qualifications
 - (i) Identification of Key Personnel
 - (ii) Summary of Personnel Experience
 - (iii) Qualification Requirements including Formal Education, Professional and Technical Licenses, and Certificates
 - (iv) Qualification of Non-Management Personnel
3. Organization and Staffing
 - (i) Proposed Organization
 - (ii) Control Within Organization Elements
 - (iii) Staffing by Organization Elements
 - (iv) Span of Supervision

- (v) Number and Classification of Employees
- (vi) Organizational Charts by Element

After initial and revised proposals were evaluated, AVSCOM requested best and final offers (BAFO). Seven firms responded, including DynCorp and the protester. The Source Selection Evaluation Board's (SSEB) evaluation of initial BAFOs narrowed the competitive range to two firms. Four firms, including the protester and Burns & Roe, received unacceptable ratings in both the management and technical areas, while a DynCorp received an acceptable management rating, but an unacceptable technical rating.

Although the SSEB made an award recommendation of a firm not involved in this protest, the Source Selection Advisory Council (SSAC) found that the SSEB had not applied the evaluation criteria equally and that the cost realism analysis was improper. AVSCOM considered various alternatives to redress the problems identified in the evaluation process, including cancelling the solicitation and preparing a new RFP with a better-defined Performance Work Statement and a firm, fixed-price format. Ultimately, the agency chose to reopen discussions with all offerors and to request a second round of BAFOs on November 22, 1991, to which all seven offerors responded.

After the evaluation of the second BAFOs, Burns & Roe and another offeror displaced the two firms originally in the competitive range, which were now considered, along with the remaining offerors, to be technically unacceptable. The SSEB found DynCorp unacceptable in the "Number and Classification of Employees" subfactor for four Performance Work Statement items: Guard/Security Services, Club Systems, Morale Support Activities, and Facilities Engineering. Under the RFP's evaluation scheme, these four ratings, or even one of them, was sufficient to find the DynCorp proposal technically unacceptable. AVSCOM also found that the DynCorp's cost proposal was not realistic. The SSEB recommended award to Burns & Roe as the lowest-priced offeror whose management and technical proposals were acceptable and its cost realistic. The SSAC approved this recommendation, and award was made to Burns & Roe on December 13, 1991.

On December 23, 1991, DynCorp filed an agency-level protest with the Army Material Command (AMC), challenging AVSCOM's determination that its proposal was technically unacceptable. AMC sustained that protest on February 18, 1992, agreeing that AVSCOM's evaluators had applied undisclosed technical requirements or had not conducted meaningful discussions in the four areas in which DynCorp received unacceptable ratings. AMC particularly referenced DynCorp's unacceptable rating for proposing too few labor hours for

one of several staff positions in the Club Systems category, the Professional Golf Association (PGA) golf pro. In sustaining DynCorp's protest, AMC found that AVSCOM had established an undisclosed minimum staffing requirement that improperly assumed the golf pro would perform job functions not specified by the RFP. The AMC decision stated, without further elaboration, that DynCorp's other three unacceptable Performance Work Statement ratings rested upon similar misassumptions by AVSCOM. AMC directed AVSCOM to reevaluate the technical proposals of all offerors in accordance with the analysis outlined in its decision, and to ensure that meaningful discussions were or will be conducted with all offerors whose proposals contained deficiencies.

On February 28, 1992, Burns & Roe filed an agency-level protest with AMC arising out of the corrective action directed in its February 18, 1992, decision. Burns & Roe argued that there were no material improprieties in the evaluation process that would justify "reopening the competition" after contract award. In addition to the Burns & Roe protest, AVSCOM submitted a request for reconsideration of the AMC December 18 decision. AVSCOM stated that it had reevaluated DynCorp's technical proposal in accordance with that decision and still found DynCorp unacceptable in one Performance Work Statement item, Guard/Security Services, for failing to propose a sufficient number of Guard Shift Supervisors. AVSCOM did not suggest in its request for reconsideration that AMC erred in its decision that AVSCOM improperly found DynCorp to be unacceptable in the other three Performance Work Statement areas. As AMC's prior decision did not specifically address this function, AVSCOM requested reconsideration of the decision in light of the reevaluation results.

On April 6, 1992, AMC denied the Burns & Roe protest and AVSCOM's request for reconsideration. AMC found that DynCorp's unacceptable rating in the Guard/Security Services category resulted from AVSCOM's use of a minimum staffing standard not necessarily based upon the RFP requirements. According to the AMC opinion, the responsible AVSCOM evaluator admitted that DynCorp received an unacceptable rating because of a restriction, not stated in the RFP, against the use of overtime, and that DynCorp could acceptably perform the guard shift supervisor functions with the use of overtime, which, incidentally, was DynCorp's current practice as the incumbent contractor. In addition, although AVSCOM did not request reconsideration of the remaining evaluation errors, AMC underscored that the evaluation standards used to find DynCorp technically unacceptable with respect to its pest control personnel (under the Facilities Engineering category) and recreational specialists (under the Morale Support Activities category)

did not reflect the RFP requirements, but AVSCOM's undisclosed preferences.

After AMC denied its protest of the proposed corrective action, Burns & Roe protested to our Office. In its protest, Burns & Roe reasserts that no impropriety occurred in the source selection process that would warrant a reevaluation of proposals. In the absence of an actual impropriety in the evaluation process, the protester maintains that any corrective action, including reevaluation, is improper.

In its administrative report on this protest, the agency advises that the reevaluation of proposals is proceeding, with particular attention to whether meaningful discussions were conducted or should be resumed if an error is found.

We have recognized that contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. Oshkosh Truck Corp.; Idaho Norland Corp., B-237058.2; B-237058.3, Feb. 14, 1990, 90-1 CPD ¶ 274. An agency may convene a new selection board and conduct a new evaluation where the record shows that the agency made the decision in good faith, without the specific intent of changing a particular offeror's technical ranking or avoiding an award to a particular offeror. Loschky, Marquardt & Nesholm, B-222606, Sept. 23, 1986, 86-2 CPD ¶ 336. We will not object to proposed corrective action where the agency does not conclude that award was necessarily made on a basis most advantageous to the government, so long as the corrective action taken is appropriate to remedy the impropriety motivating it.¹ See Oshkosh Truck Corp.; Idaho Norland Corp., *supra*; Power Dynatec Corp., B-236896, Dec. 6, 1989, 89-2 CPD ¶ 522.

¹Burns & Roe argues that AMC must have a reasonable basis to believe that an evaluation impropriety occurred before it can terminate, or even suspend, Burns & Roe's contract award. However, the agency is not proposing to terminate the award, but only to reevaluate proposals and to determine whether AVSCOM conducted meaningful discussions or should conduct further discussions. Moreover, an agency may suspend a contract award while reevaluating proposals to ascertain whether the award is most advantageous to the government. See Unified Indus., Inc., B-241010; B-241010.2, Dec. 19, 1991, 91-1 CPD ¶ 11. Finally, while Burns & Roe argues that AMC did not accord proper deference to AVSCOM's evaluation, agency reviewing officials need not accord such deference. See Scheduled Airline Ticket Offices, Inc., B-229883, Mar. 29, 1988, 88-1 CPD ¶ 317.

The record in this case reasonably supports AMC's conclusion that AVSCOM may have evaluated offerors' technical proposals against staffing standards not based upon the RFP requirements, and that an evaluation so conducted would not provide reasonable assurance that the award was made on a basis most advantageous to the government. The record reflects, and the protester acknowledges, that the Performance Work Statements identified the work elements, performance standards, and key personnel required of the contractor, but "did not seek to define each element of work that each member of the contractor's staff should perform." Rather, the specifications "left it to each offeror's discretion to propose how he would staff . . . all effort described" and did "not attempt to enumerate the minimum responsibilities" of specific staff members. Yet, AVSCOM developed minimum staffing models that placed responsibilities or restrictions on contractor personnel not specified in the RFP.

For example, in the case of the PGA golf pro, AVSCOM developed an undisclosed, minimum staffing model based upon a requirement that the golf pro be available for instruction, inventory controls, greens maintenance, and sales and services at the golf pro resale shop. However, as AMC correctly observed, the RFP set forth only one function for the golf pro, "to provide golf lessons and instructions," and did not require the additional services that AVSCOM used as a basis to disqualify DynCorp's proposal. In a similar vein, the record reflects that AVSCOM developed a minimum staffing model for guard shift supervisors based on the assumption that an employee could work no more than 40 hours per week, although the RFP did not prohibit the use of overtime.

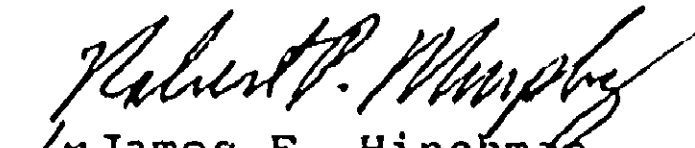
The record also indicates that AVSCOM may have applied erroneous staffing standards in rating DynCorp unacceptable in the remaining two Performance Work Statement categories. For example, AVSCOM could not show that DynCorp's proposed recreational staff failed to meet the solicitation requirements, acknowledging that DynCorp accurately computed the number of operating hours of the fitness facility that the staff was to serve. With regard to DynCorp's proposed pest control staff, AVSCOM admitted during DynCorp's agency-level protest that the RFP's staffing requirements were ambiguous and that DynCorp apparently proposed an adequate number of employees.

Similarly, AMC found that the determination that DynCorp's proposal was not cost realistic was also flawed for a variety of reasons, including, among other things, inadequate discussions. While the protester has made numerous arguments that AVSCOM properly found DynCorp's proposal to be unrealistic as to cost, the record contains

adequate evidence that AMC's contrary finding in this regard was made in good faith.²

In conclusion, we think that AMC's decision to require the reevaluation of technical proposals was made in good faith, without the specific intent of avoiding an award to Burns & Roe, particularly given the complex nature of the RFP's management and technical evaluation matrix, where an unacceptable rating in any one of the 137 "go/no-go" criteria would be sufficient to disqualify an offeror's entire proposal from award consideration. See Loschky, Marquardt & Nesholm, supra. As AMC stated, "the services being procured were ordinary, but the challenge facing the successful contractor was extraordinary . . . This in turn placed a heavy burden on AVSCOM to properly evaluate every aspect of the technical proposals." If, upon reevaluating the proposals, the agency finds that a prejudicial impropriety occurred in the source selection process, it would then have a reasonable basis to reopen discussions. See BDM Int'l Inc., B-246136.2, Apr. 22, 1992, 71 Comp. Gen. _____, 92-1 CPD ¶ 377, aff'd, B-246136.3, May 27, 1992, 92-1 CPD ¶ 472.

The protest is denied.


for James F. Hinchman
General Counsel

²We will not disclose the various reasons because of their proprietary nature.